



In the Matter of:

**OFFICE OF FEDERAL CONTRACT
COMPLIANCE PROGRAMS,
U. S. DEPARTMENT OF LABOR,**

ARB CASE NO. 97-127

ALJ CASE NO. 87-OFC-20

PLAINTIFF,

DATE: July 24, 2000

v.

KEEBLER COMPANY,

DEFENDANT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Plaintiff:

L. Denise Galambos, Esq., Jessica Glick, Esq., Pamela A. Gibbs, Esq., Richard L. Gilman, Esq., Diane A. Heim, Esq., Willie M. Alexander, Esq., James D. Henry, Esq., Henry L. Solano, Esq., *U. S. Department of Labor, Washington, D.C.*

For the Defendant:

Edward Katz, Esq., Rosemary C. Lumpkins, Esq.,
Constange, Brooks & Smith, Atlanta, Georgia

**ORDER DENYING MOTION TO ALTER OR AMEND
FINAL DECISION OF DECEMBER 21, 1999**

We have before us Office of Federal Contract Compliance Program (OFCCP), Plaintiff's Motion to Alter or Amend the Final Decision and Order of December 21, 1999 in the above-captioned case. We construe the motion as a motion for clarification.

OFCCP asserts that "[c]ases applying the OFCCP hearing rules have long held that the requirements of 41 C.F.R. §60-741.6(c) are appropriately construed to shift to the contractor the burden of proving that those of its physical and mental qualification standards that disproportionately eliminate qualified individuals with disabilities are justified by business necessity." We agree with this

statement, and see nothing in the Administrative Procedure Act or in our final decision that conflicts with that statement or requires further clarification. In any event, §60-741.6(c) and the business necessity defense are not at issue, because, as we held in our decision, OFCCP failed to prove that DeAngelis was a qualified handicapped individual.

SO ORDERED.

PAUL GREENBERG

Chair

E. COOPER BROWN

Member

CYNTHIA L. ATTWOOD

Member